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**NLRB HOLDS THREATS OF PLANT CLOSURE
WILL NOT BE PRESUMED DISSEMINATED**

The National Labor Relations Board, in a 3-2 decision involving Crown Bolt, Inc., held that an employer's threat to close its facility in the event employees vote for union representation will not be presumed disseminated throughout the bargaining unit. The Board's holding, however, is prospective only. In all pending cases involving threats of plant closure, the Board will continue to rebuttably presume that such threats were widely disseminated. The majority opinion is signed by Chairman Robert J. Battista and Members Peter C. Schaumber and Ronald Meisburg. Members Wilma B. Liebman and Dennis P. Walsh dissented in part. *Crown Bolt, Inc.*, 343 NLRB No. 86. The decision is posted on the Board's website at www.nlr.gov.

The decision overrules the Board's decision four years ago in *Springs Industries, Inc.*, 332 NLRB 40 (2000), which held that plant-closure threats are presumed disseminated throughout the plant absent evidence to the contrary. *Springs Industries*, in turn, overruled *Kokomo Tube Co.*, 280 NLRB 357 (1986), where the Board declined to presume dissemination of a threat of plant closure made to a single employee. The *Crown Bolt* majority concluded that *Kokomo Tube* "represents the better evidentiary rule in requiring the party that seeks to rely on dissemination throughout the plant to show it."

In overruling *Springs Industries*, the *Crown Bolt* majority relied on several considerations. First, because the burden of proof in election-objection cases rests with the objecting party, *Springs Industries* "runs counter to the burden-allocation norm." Second, while the holding of *Springs Industries* is limited to plant-closure threats, its rationale is not, so "there is no apparent basis for declining to extend [the dissemination presumption] to other kinds" of statements. Third, the presumption is unnecessary: if dissemination of plant-closure threats is "all but inevitable," as the Board stated in *Springs Industries*, then it should be easy for the objecting party to prove. Fourth, employers face an undue burden in proving a lack of dissemination. Finally, circumstantial variations affect the probability of dissemination in any particular case, arguing against presuming dissemination in all closure-threat cases.

In their partial dissent, Members Liebman and Walsh characterized *Kokomo Tube* as an aberration from the Board's "traditional practice" of presuming dissemination of plant-closure threats. Emphasizing the severity of such threats, the dissent rejected the majority's view that circumstantial variations from case to case sufficiently affect the probability that such threats will be disseminated to warrant dispensing with the *Springs Industries* presumption. The dissent disagreed that dissemination should be easy for the objecting union to prove, stating that "employees are often reluctant, even afraid, to testify against their employer." Correspondingly, the dissent suggested that the majority had exaggerated the difficulties faced by employers in rebutting the dissemination presumption. The dissent also defended the *Springs Industries* presumption on the ground of administrative efficiency. Finally, the dissent noted the consistency of the *Springs Industries* presumption with the analogous "lore of the shop" principle, under which the Board assumes that plant-closure threats and other serious unfair labor practices will live on in the lore of the shop by being disseminated to new employees months and even years after the event.

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